MISCELLANY.

A New System of Courts.—The American Judicature society, of Chicago, is sending out a first or rough draft of a statewide judicature act intended to be enacted to supplant the system of courts and administration of justice now in vogue, with but slight variation, in every State of our Union.

The proposed new system contemplates the abrogation of every court below the supreme court of the State. The supreme court is to become a great central tribunal with subordinate branches and judges to be supervised and controlled by this central tribunal, in reality but a single court with several subordinate divisions.

This first or rough draft of this proposed new judicial system is a very smooth copy of the judicial system of China, now and for nearly 5,000 years the native judicial system of that country. From a Chinese standpoint that is how new this new system is.

Considered as one of the fundamental principles of government in general, this system is as new as paternalism and monarchy.

The system of a central court with subordinate branches and judges belongs to that period when absolutism is confronted with too great a population and extent of territory to permit the autocrat to personally direct his entire autocracy or kingdom. Then he appoints a chief judge, or personal representative, formerly known as "the keeper of his conscience," variously called viceroy, chancellor, minister,—frequently an ecclesiastic, as witness DeRetz, Mazarin, Richelieu, and seldom or never a doctor of the law.

We thus see that this "new judicial system" belongs, and has always been present, with the early ages and stages of civilization. In that connection and sense only is it new.

If this propaganda for a "new judicial system" stood alone, perhaps it would require no comment; but it is only one of a very numerous class. At the present time and for several years last past, we have been deluged with schemes, urged as reforms and betterments, but in reality ulterior attempts upon our popular form of government,—the short ballot which would give us bureaucracy, educational systems to restrict popular control of all matters, the extension of interstate regulations to the point of destroying all the powers and government of the States, and many others. The transfer of our police powers to the Nation means that we will be under the equivalent of a foreign dominion; and the adoption of the central court system means that we are going back to medieval Europe and present China for something "new."

Our own Revolution was fought, among other things, against the tyranny of a central court, the will of the British sovereign, when

the judges took their "instructions" from the crown, then "the fountain of justice" in England, the central court.

Our government is founded in the independence of the judiciary, the greatest boast of free men. The "new judicial system" would make all subordinate judges mere "hired hands," and the "great chief" alone might be said to be independent, but his independence would be altogether like that of the British crown in former times, pure tyranny, and that is what unrestrained discretion has always been.—Lawyer and Banker.

The European war, writes Donald Mackay in "The Central Law Journal," has revived many things which were thought to have been laid past in the lumber room, and one of these is the rule of law which puts the wills of soldiers in a privileged position. Law students noted the doctrine as of academic interest and practitioners had nearly quite forgotten it, but now on every barracks or depot wall there is posted a notice directing the soldiers to deposit their wills with a specified official. The privileges attached to a soldier's will originated, it is said, in the legions of Julius Caesar. One cannot be certain as to that, but that they sprung out of the Roman law is generally accepted by legal historians. The Romans required the observance of numerous solemnities in the making of wills, far more than English law requires, but all this red tape was dispensed with as regards the wills of soldiers in expeditione, that is when they were on active service as Caesar's legions were in Gaul or the British Expeditionary Force is in Belgium.

The Roman soldier's will was held valid though made when he was under age; though not written, if sufficiently proved by witnesses; and though devoid of all formalities. In British law these same rules have obtained and in the course of time have been amplified, as a few illustrations now given will show.

It is obvious that the oral will gives scope for much deception and hence its practical abolition in the case of civilians, by the law requiring writing, and the subscription of the testator, but a good illustration of the exception made in the case of a soldier was an oral will made by a private in a Lancer regiment in South Africa during the South African war. It consisted of a note taken down in writing of a verbal declaration made by the deceased. The commanding officer had directed squadron officers to ascertain the names of the next-of-kin of all men under their commands or the person to whom each man desired his effects to be sent in the event of his death. The deceased had stated that in the event of his death in South Africa he desired all his effects to go to his sister. Sir Francis Jeune held that the squadron officer's note to that effect was a will and he accordingly granted letters of administration on it.

Then a mere letter to a friend may, in the case of a soldier, get the status of a will. Thus a private stationed at Fort William in Calcutta wrote a letter to his friend telling him that he was just off to South Africa for the Boer war. and went on, "I am sending a box of things to you which I want you to look after for me till I come home. They are a lot of curios, and there are some things for you there, but if you have a letter to say I am killed, the lot is for you." That letter the court held amounted to a testamentary disposition.

In that case the letter was signed but subscription is not essential in the case of a soldier's will, and there are several cases of memoranda in note books, written on fly-leaves of Bibles, pencil jottings, and so on, all of them unsigned, being given effect to as wills.

Now it is plain that however justifiable it may be to allow all the looseness in the case of soldiers, it opens a wide door to abuse, irregularity and even deliberate fraud, and therefore the Roman authorities wisely limited the privileges to soldiers on actual military service, some authorities say that the words "in expeditione" imply an even stricter limitation and that the soldiers must have been on a definite expedition.

Our courts, while adhering to the general rule of the Roman law, have differed as to what the condition referred to exactly meant. In some cases it has been held that a soldier sent abroad to a foreign station in time of peace is on actual military service, and one judge held the doctrine applicable to any soldier in the regular army as opposed to volunteer forces. On the other hand, the privilege was refused in the case of an officer who had left England to take over a command in the Indian army, and died in Mysore, and that even though he was actively discharging the duties of his command, and was at any moment liable to be called upon to march with his division to whatever point the exigencies of a native war, then being carried on in India, might require. Yet, apparently, as he had not gone on any actual military expedition the Court refused to recognize him as a soldier on actual military service. That case has not been overturned, but it may be taken for granted that it is too strict and savors too much of the pedantic to be now acceptable.

In view of these conflicting cases, Sir Francis Jeune, when the Boer War Cases came before him, laid down that two things were essential in order to bestow on oral bequests or informal writings the privileges of a soldier's will. First, a state of war must exist and second, some active step should be taken by the testator towards joining the forces in the field, and such step might be a small one both as regards time and place. "I should imagine for instance," said his lordship, "that a man lying at Dover, and who was called upon to go into the fortifications at Dover and to assist in the defence, would have been within the meaning of the term in expeditione."